IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.15 of 2002

Date of decision 13.6.2007

Bhag Chand Petitioner

Vs.

Union of India and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioners: Mr.I.D.Bali, Senior Advocate, with
Mr.Virender Bali, Advocate.

For the Respondents : Ms. Shilpa Sood, Central Govt. counsel.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner was appointed constable in Group Centre SSB vide a letter dated 16.8.1989. He was assigned No.8968383. He had been discharging his duties diligently but his health deteriorated in the year 1993 and was advised to take treatment from a psychiatrist. He remained under treatment of the psychiatrist. G.D.O.-1 District Hospital Mandi with effect from 11.3.1993 to 27.7.1993 for 130 days and during this period he was advised complete rest. The Doctor has found him suffering from schizophrenia. He was found fit to resume duties by the doctor vide a certificate dated 27.7.1993. He joined his duties and again fell ill in the month of December, 1993 and had to be examined by the Psychiatrist,

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[1] Whether reporter of local papers are allowed to see the judgment ? Yes.

District Hospital, Mandi on 11.12.1993. Thereafter he was again examined by the Psychiatrist on 18.3.1994. He was again advised to see the Psychiatrist with effect from 21.12.1994 to 3.1.1995 and subsequently the fitness certificate was issued to him to resume his duties. He was taken to the Psychiatrist on 8.10.1997 and when he was declared fit he resumed his duties for few months, but in the month of November, 1998 his health again deteriorated.

It is averred in the petition that Battalion Head Constable had asked him to sign a blank paper and told him that he would be allowed leave with effect from 24.11.1998 and on this blank paper his resignation letter was written on 24.11.1998 and subsequently vide office order dated 25.11.1998 his name was struck off from the strength of GC SSB Shamshi. A representation was made by him on 3.3.2000 to withdraw office order dated 25.11.1998 which was rejected by the Commandant, GC(SSB), Shamshi on 10.4.2000 and revision petition was also dismissed on 27.7.2000.

Mr.I.D.Bali, learned senior counsel appearing on behalf of the petitioner has strenuously argued that the petitioner had never submitted resignation letter 24.11.1998 attached with Annexure R-6 and has also made alternative submission that his client being patient of schizophrenia was not in a position to understand the implications of the resignation. Ms.Shilpa Sood, learned Central Government Counsel appearing for the respondents had supported the order dated 25.11.1998 and submitted that the same could be withdrawn as per Rule 26 (4)(iii) of CCS(Pension) Rules, 1972 within ninety days.

I have heard the learned counsel for the parties and also gone through the record carefully.

The petitioner had joined his duties as Constable in Group Centre, SSB, Shamshi on 16.8.1989. It is evident from the various medical prescription slips annexed with the petition that he was suffering from schizophrenia. He had repeatedly been taken to psychiatrist who had been advising rest as and when his health improved he was permitted to join his duties. He had discharged his duties from 1989 till 1993 diligently and thereafter his health had started deteriorating. It is in these circumstances that resignation letter 24.11.1998 attached with Annexure R-6 is to be considered to find out whether the petitioner was in a sound state of mind to understand the implication of the same or not. The petitioner had been taken to the psychiatrist on 11.8.1998 as is evident from Annexure R-5 and the resignation letter is 24.11.1998. He had tendered his resignation on 24.11.1998 and the same was forwarded to the Commandant, GC (SSB) by the Inspector, Head Quarters, GC SSB, Shamshi, Kullu on 24.11.1998 and in a utter haste the same was accepted on 25.11.1998 vide Annexure R-7. The plea of the respondents that he was made to understand the implication of the resignation is untenable. It has not come on record in what manner the petitioner was dissuaded from submitting his resignation. To the contrary it appears that the respondents have taken a very hasty decision by accepting his resignation taking advantage of his mental health. The acceptance of resignation of the petitioner on 25.11.1998 had civil consequences. He had put in about nine years of service. At the time of resignation he had three minor children and his brother had also died in October, 2005, leaving behind three minor children and widow. One of his brothers is deaf and dumb. It appears that when he had recovered from his ailment he had also submitted representations to the Commandant GC (SSB) on 3.3.2000 for withdrawal of his resignation, but the same have been rejected on 10.4.2000 and 27.7.2000 without a speaking order.

The Apex Court has explained the term schizophrenia in case **Ram Narain Gupta vs. Smt.Rameshwari Gupta,** (1988) 4 SCC 247 as under :

> "24. But the illness that are called "mental" are kept distinguished from those that ail the 'body' in a fundamental way. In "philosophy and Medicine", Vol.5 at page X the learned editor refers to what distinguishes the two qualitatively:
>
> Undoubtedly, mental illness is so disvalued because it strikes at the very roots of our personhood. It visits us with uncontrollable fears, obsessions, compulsions, and anxieties…..
>
> ….. This is captured in part by the language we use in describing the mentally ill. One is an hysteric, is a neurotic, is an obsessive, is a schizophrenic, is a manic-depressive. On the other hand, one has heard disease, has cancer, has the flue, has malaria, has smallpox….
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> (emphasis supplied)

25. 'Schizophrenia'. It is true, is said to be difficult mental affliction. It is said to be insidious in its onset and has hereditary predisposing factor. It is characterized by the shallowness of emotions and is marked by a detachment from reality. In paranoid states, the victim responds even to fleeting expressions of disapproval from others by disproportionate reactions generated by hallucinations of persecution. Even well meant acts of kindness and of expression of sympathy appear to the victim as insidious traps. In its worst manifestation, this illness produces a crude wrench from reality and brings about a lowering of the higher mental functions.

26. "Schizophrenia is described thus:

> A severe mental disorder (or group of disorders)characterized by a disintegration of the process of thinking, of contract with reality, and of emotional responsiveness. Delusions and hallucinations (especially of voices) are usual features, and the patient usually feels that his thoughts, sensations, and actions are controlled by, or shared with, others. He becomes socially withdrawn and loses energy and initiative. The main types of schizophrenia are simple, in which increasing social withdrawal and personal ineffectiveness are the major changes; hebephrenic, which

starts in adolescence or young adulthood (see hebephrenic); paranoid, characterized by prominent delusion; and catatonic, with marked motor disturbances (see catatonia).

Schizophrenia commonly- but not inevitably-runs a progressive course. The prognosis has been improved in recent years with drugs such as phenothiazines and by vigorous psychological and social management and rehabilitation. There are strong genetic factors in the causation, and environmental stress can precipitate illness."

27. But the point to note and emphasise is that the personality disintegration that characterizes this illness may be of varying degrees. Note all schizophrenics are characterized by the same intensity of the disease. F.C.Redlich and Daniel X. Freedman in "The Theory and Practice of Psychiatry")1966 edn.) say:

> Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living….(p. 252)

The word 'schizophrenia' has been explained by the Apex Court in case **State of H.P. vs. Gian Chand**, (2001)6 SCC 71 as under:

> Schizophrenia is one of a group of severe emotional disorders, usually of psychotic proportions, charaterised by misinterpretation and retreat from reality, delusions, hallucinations, ambivalence, inappropriate affect, and withdrawn, bizarre, or regressive behaviour; popularly and erroneously called split personality.(See Medical Legal Dictionary, Sloane-Docland, p.628)"

Mr.I.D.Bali had also relied upon the judgment of the Division Bench of this Court rendered in CWP No.630 of 1992 decided on 2.12.1992, wherein in the similar circumstances the Court has held that the tendering of resignation by the petitioner was not voluntary. Their Lordships have held as under :

"From all this material on record, it is proved that when on 8th October, 1991 the petitioner submitted his resignation letter, he was not in a fit and discreet state of mind to decide that he did not want to serve the High Court as driver. At that time, the petitioner had put in more than five years regular service in the High Court and there is nothing on the record to show that he had any reason to tender resignation except his disturbed state of mind. Therefore, the facts and circumstances on record leave no doubt that the act of tendering resignation by the petitioner was not voluntary but was an act of an imbalanced mind. Even in Notes No.197 to 199 in File No.HHC/Admn.1(225)/86, while dealing with the resignation of the petitioner, after referring to the facts and circumstances in respect of his ill health, it was suggested that the resignation tendered by the official may be ordered to be kept pending till the opinion of the Medical Board was received. This suggestion, however, did not find favour with the registrar of the High court and he placed before the Hon'ble the Chief Justice his own Notes No.208 to 212 dated 15th November,1991 concluding that, "I am of the view that resignation of Mr.Arun Kumar is voluntary which is liable to be accepted. Hon'ble the Chief Justice may like to accept the resignation." It was in this background that the order dated 15th November,1991 accepting the resignation was passed by the Hon'ble the Chief Justice of the High Court. The reply-affidavit filed on behalf of the High court stating that there was nothing on its record to show that the petitioner was insane and he was under treatment in Indira Gandhi Medical College, Shimla, for such an ailment is contrary to the record which has been referred to by us hereinbefore. Anyhow, exercising judicial restraint, we do not make any further comment in this regard.

If resignation is relinquished of one's right in respect of an office/post, it cannot be tendered by a person who is not in a fit state of mind to think properly what to talk of taking a decision to terminate the contract of his service/employment. Applying the principle envisaged under Sec.11 of the Contract Act that a contract entered into by a person of unsound mind is not a legal contract, a severance of contract of employment by a person of unsound mind cannot be held legal. Therefore, we have no hesitation to hold that being of unsound mind at the relevant time, the resignation

tendered by the petitioner was not legal hence its acceptance was also bad."

The upshot of the above discussion is that the resignation tendered by the petitioner on 24.11.1998 cannot be termed as voluntary act and thus its acceptance on 25.11.1998 is liable to be struck down. The petitioner was not in a fit state of mind to take a decision whether to tender resignation or not on 24.11.1998 taking into consideration the ailment he was suffering from. Accordingly, this writ petition is allowed and Anenxures P-7, P-12 and P-13 are quashed and set aside. The petitioner shall be deemed to be in service with all consequential benefits.

June 13,2007 (g) **(Rajiv Sharma), J.**